

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2058 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ARERA DUDH UTPADAK SOC.LTD

Versus

RATHABHAI M SODHA

Appearance:

MR HM PARIKH for Petitioner

MR DAXESH T DAVE for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 12/04/2001

ORAL JUDGEMENT

This is a petition under Article 227 of the Constitution of India by a Co-operative Society, challenging the judgement and order passed by the Gujarat State Co-operative Tribunal in an appeal filed by the

present respondent from the decree passed against the present respondent by the Board of Nominees. The short facts of the case are, the present respondent was at the relevant point of time the Secretary of the petitioner society, and who was, in general terms, in-charge of the affairs of the society.

The society had filed a Suit in the Nominees Court for recovery of the amount allegedly due from the present respondent Secretary, as also from the clerk of the society for the specific amounts for which the two of them were alleged to have been responsible, and which resulted in loss to the society because of their misappropriation, negligence, carelessness etc. The claim of the society was mainly under two heads, one the claim arising from insurance amount in the sum of Rs. 750/-, the other claim was in respect of the value of shortage of stock of cattle-feed. The Nominees Court found in favour of the petitioner society, and so far as the respondent Secretary is concerned, fastened the liability of the insurance amount at Rs. 750/- entirely on the Secretary, and fastened the liability of one half of the cattle-feed amount upon the Secretary and one half upon the cattle-feed clerk.

Being aggrieved by the decree passed by the Nominees Court, the Secretary, namely - the present respondent preferred an appeal before the Gujarat State Co-operative Tribunal, Ahmedabad.

After appreciating the totality of the evidence on record and appreciating the same in the light of the pleadings of the parties, the Tribunal upheld the liability of the appellant Secretary so far as the insurance amount of Rs. 750/- is concerned. However, the Tribunal held in favour of the appellant Secretary and found that no decree against the appellant was justified in respect of the shortage of cattle-feed and to that extent set aside the decree passed by the Nominees Court. Hence, the present petition at the instance of the Co-operative Society.

Before proceeding further on the merits of the matter, it is desirable to keep in mind the observations of the Supreme Court in the case of Mohammad Yunus Vs. Mohammad Mustaqim (AIR 1984) SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the

aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

I have heard learned Counsel for the respective parties, perused the impugned judgement and also examined the contentions raised by the petitioners in the light of the relevant discussion, including plaint at Ex.1.

The Tribunal was entirely justified in observing that so far as the responsibility in respect of the shortage of cattle-feed is concerned, the plaint categorically states that the responsibility of maintaining the cattle-feed stock register, cattle-feed sales register, preparation of bills and maintaining records pertaining to the cattle-feed was the responsibility of the cattle-feed clerk. In short, the entire responsibility of maintaining documents, registers and accounts in respect of cattle-feed has been assigned to the cattle-feed clerk, in the plaint. No responsibility is assigned to the respondent Secretary so far as cattle-feed stock and sales are concerned. At best, the respondent Secretary would be responsible only in an administrative and supervisory capacity without having a direct responsibility so far as the cattle-feed is concerned. The Tribunal has also rightly found that the deposition of the society's own witness Harmeshbhai at Ex.52, who is a member of the Committee, also supports the averments made in the plaint, but it does not support the oral evidence of other witnesses of the society who suggest that the Secretary was also jointly responsible for the cattle-feed.

In short, the crux of the matter is appreciation of evidence on record, in the light of the averments made in the plaint.

I find that the interpretation put upon, assertions and averments made in the plaint as interpreted by the Tribunal are rational and reasonable and are eminently sustainable. This is particularly so since the society's own committee member supports these specific averments in the plaint, rather than the general averments made by other witnesses of the society. In any case, the other general averments made by other

witnesses, to the effect that the Secretary was also jointly responsible with the cattle-feed clerk in respect of the cattle-feed business, is evidence which goes beyond the pleadings put up by the society in the plaint and therefore to that extent cannot be taken into consideration.

I therefore find that there is no infirmity whatsoever in the impugned judgement of the Tribunal and the same requires to be upheld.

Consequently, there is no substance in the present petition and the same is accordingly dismissed. Rule is discharged with no order as to costs.

*/Mohandas